



## Yellowstone County Zoning Commission Minutes for the Meeting of Monday September 12, 2005

The County Zoning Commission met on Monday September 12, 2005 in the large conference room on the 4<sup>th</sup> floor of the Parmly Library, 510 North Broadway.

Oscar Heinrich, Chairman, called the meeting to order at 4:00 p.m.

Commissioners and Staff		1/10/05	2/14/05	3/14/05	4/11/05	5/9/05	6/13/05	7/11/05	8/8/05	9/12/05	10/10/05	11/14/05	12/12/05
Oscar Heinrich	Chairman	CANCELLED	1	1	CANCELLED	1	1	CANCELLED	1	1			
Jerome Musselman	Vice-Chair		1	1		1	1		1	1			
Al Littler	Commissioner		1	1		1	1		1	1			
Joan Hurdle	Commissioner		1	1		1	1		1	1			
Dennis Cook	Commissioner		1	1		1	1		1	1			
Nicole Cromwell	Planner II/ Zoning Coordinator		1	1		1	1		1	1			
Wyeth Friday	Planner II		1	-		1	1		1	1			
Elizabeth Allen	Planning Clerk		1	1		1	1		1	1			

**Chairman Heinrich** introduced the County Zoning Commission members and staff in attendance:

Nicole Cromwell, Planner II/Zoning Coordinator  
Wyeth Friday, Planner II  
Elizabeth Allen, Planning Clerk

### ANNOUNCEMENTS:

There were none.

### PUBLIC COMMENT

**Chairman Heinrich** asked if there was anyone else wishing to speak during the public comment portion of the meeting. **Chairman Heinrich** stated that any member of the public may be heard on any subject that is not on the agenda, and that the Yellowstone County

Zoning Commission will not take any action on these items at this time, but could choose to add an item to the next meeting's agenda for discussion.

There were none.

**Approval of Minutes:**  
**None.**

**Public Hearings:**

**Chairman Heinrich** reviewed the rules for the procedure by which the public hearings will be conducted. He said the applications heard at this meeting would be forwarded to the BOCC at their meeting of September 30, 2005

**Item 1: Zone Change #582**

**Mr. Friday** read the legal description and reviewed the staff report with an overhead PowerPoint presentation for the audience and reviewed the surrounding properties while explaining the existing zoning of the subject property. She said staff is forwarding a recommendation of denial. He explained the reasons for the staff decision.

**REQUEST**

This is a zone change request from Highway Commercial to Controlled Industrial on the 9.4-acre Lot 7, Block 3 of the Titan Subdivision. The property is located at 5815 Interstate Avenue. The Planning staff is forwarding a recommendation of denial for this application.

**APPLICATION DATA**

OWNER:	Jerry Jones, Billings Precast
APPLICANT:	Engineering, Inc.
LEGAL DESCRIPTION:	Lot 7, Block 3, Titan Subdivision
ADDRESS:	5815 Interstate Avenue
CURRENT ZONING:	Highway Commercial
PROPOSED ZONING:	Controlled Industrial
EXISTING LAND USE:	<b>Crop production</b>
SIZE OF PARCEL:	9.4 acres

**APPLICABLE ZONING HISTORY**

**October 25, 1977:** A zone change request from Agricultural Open Space and Residential Manufactured Home to Controlled Industrial was approved for River Grove Estates Subdivision. This subdivision is located about one-quarter mile south of the subject property.

**August 3, 1995:** A zone change request from Agricultural Open Space to Controlled Industrial was withdrawn for property in the Bottrel Subdivision on the eastside of Shackelford Lane about one-half mile southwest of the subject property.

**May 30, 1996:** A zone change request from Agricultural Open Space to Controlled Industrial was approved for property in the Bottrel Subdivision on the eastside of Shackelford Lane about one-half mile southwest of the subject property.

**May 30, 2000:** A zone change request from Agricultural Open Space to Controlled Industrial was approved for lots 4 and 5, Block 1 of the Bottrel Subdivision about one-half mile southwest of the subject property.

### **CONCURRENT APPLICATIONS**

A Special Review to allow a pre-cast concrete facility and office in the Controlled Industrial zoning district.

### **SURROUNDING LAND USE & ZONING**

NORTH:	Zoning:	Agricultural Open Space and Highway Commercial
	Land Use:	Agricultural uses, water park and restaurant
SOUTH:	Zoning:	Highway Commercial and Agricultural Open Space
	Land Use:	Heavy equipment sales business and agricultural uses
EAST:	Zoning:	Highway Commercial
	Land Use:	Construction and other commercial businesses
WEST:	Zoning:	Agricultural Open Space
	Land Use:	Sod farm operation

### **REASONS**

This is a zone change from Highway Commercial to Controlled Industrial on 9.4 acres of land located at 5815 Interstate Avenue. The purpose of the zoning request is to allow the applicant to apply for a Special Review to allow a pre-cast concrete manufacturing business on the property. Pre-cast concrete manufacturing is not allowed in the Highway Commercial zoning district. Pre-cast concrete manufacturing is allowed in the Controlled Industrial zoning district only through approval of a Special Review application. The property is located in the Titan Subdivision, a commercial subdivision that is zoned Highway Commercial. Existing businesses in the subdivision include a mobile crane business, a heavy equipment sales business and several contractor offices and storage facilities. A new subdivision has just received preliminary plat approval across Mallowney Lane from the Titan Subdivision about one-quarter mile from the subject property. The new Riverfront Pointe Subdivision is proposed in the Highway Commercial zoning district to have single-family and multi-family residential development. The applicant would like to relocate the Billings Precast concrete business to the property to operate a new manufacturing plant and office at the site. Billings

Precast produces various cast concrete products, including septic tanks and pipe. The business currently resides at 29<sup>th</sup> Street West in a Controlled Industrial zoning district.

The Controlled Industrial zoning district allows more intense uses than the Highway Commercial District. However, most of the more intense uses allowed in the Controlled Industrial are only allowed by Special Review. Controlled Industrial zoning allows uses including sawmills and cabinet manufacturing, while Highway Commercial allows only offices outright and some manufacturing by special review. Controlled Industrial also allows passenger and freight terminals and storage of equipment and supplies for heavy construction while Highway Commercial does not allow these uses at all. More intense manufacturing, including concrete fabrication and metal industry operations are only allowed by Special Review in the Controlled Industrial district and are not allowed in the Highway Commercial district. Generally, many of the uses allowed in the Highway Commercial zoning district are allowed in the Controlled Industrial zoning district. It appears that the most significant difference between the two zoning districts in terms of uses is that the Controlled Industrial zoning district allows a variety of more intense industrial uses by Special Review.

The proposal to have a concrete casting plant on the subject property is subject to a Special Review in addition to the need to have the property zoned Controlled Industrial. Rezoning the subject property would provide for one Controlled Industrial zoned property next to Highway Commercial zoned property in the rest of the Titan Subdivision, and Agricultural Open Space zoning bordering the subject property on the north and west outside of the subdivision. While Controlled Industrial zoning allows much more intense uses than Agricultural Open Space zoning, it more closely fits with the Highway Commercial zoning district in terms of outright allowed uses.

The planning staff is forwarding a recommendation of denial on this application. Staff finds that Controlled Industrial zoning in a subdivision that is zoned Highway Commercial, and in an area that also has Agricultural Open Space zoning, does not fit with the character of this area of the County and does not support the most appropriate use of the land in this area of the County. Staff has based this finding on the 12 criteria for zone changes discussed below.

## **RECOMMENDATION**

Denial

### **Discussion:**

**Commissioner Hurdle** asked if the new covenants have been reviewed.

**Mr. Friday** stated that they had that the board had been sent the covenants and the applicant and agent will be able to explain that better. He stated that the covenants will keep the use of the property to a cement manufacturing. He stated that this is a concern to the planning staff

because it will allow the zoning to move forward but it would be limited to this one specific use.

**Commissioner Littler** asked if staffs worries had been appeased.

**Mr. Friday** stated that the planning staff has to look at the zoning not at the covenants and restrictions. He stated that the planning department does not enforce C&R's. He stated that this is problematic because then the planning department would have to track both the zoning and the C&R's. He stated that it is hard to limit the uses because it is difficult to tract the allowed uses of this property outside of zoning. He stated that there is a concern about mixing what is allowed in zoning and what is restricted by the covenants.

**Chairman Heinrich** asked if the covenants could be changed without board approval.

**Mr. Friday** stated that they could.

**Commissioner Hurdle** stated that she is concerned because of newly adopted Growth Policy wants to keep industrial away from the river and the highways. She stated that this is one of the last areas along the river that does not have industrial along it. She asked if the planning department had compiled a comparison of how much industrial there is compared to other zones. She asked if there is a great need currently for industrial zoning. Commissioner Hurdle stated that she is concerned that there is a lot of industrial and commercial properties in the City of Billings.

**Mr. Friday** stated that there is vacant property that is available in the city of Billings that is zoned CI. Mr. Friday stated that they have not looked at the amount of vacant property available.

**Commissioner Littler** stated that he is working with property owners within Titan Subdivision. He stated that he had talked with property owners in the subdivision and he feels that the covenant change is fine. He stated that he will not abstain from this vote.

**Chairman Heinrich** asked Rick if he wanted to give any explanation.

**Rick** stated that there is no property currently available for the type of business that he has. He stated that the applicant would like to be close to the interstate because they need easy access in that area. He stated that the new subdivision in the area along the interstate have more landscaping so that the area looks nice. He stated that the building that is currently being used by the applicant does not look like it would be out of place in the area. He stated that they do not have noxious fumes, odd hours or loud noises. He stated that in the current Titan subdivision there are other business that would fit well with this type of business. He stated that in paragraph 4 the covenants have been amended to expressly only allow a pre-cast concrete business. He stated that the only CI use is that concrete business. He stated that they would still have Highway Commercial uses on that property. He stated that although this is not enforceable through the planning department they will be enforced through the property owners who are all very involved and they have all consented to allow this zone change. He stated that they would file the covenants with the Clerk and Recorder. He stated that this is somewhat problematic for zoning but he stated that there are other properties that have this type of restriction.

**Commissioner Hurdle** asked if there is another piece of property that will work.

**Rick** stated that he has been unable to find a property that is the right size and price. He stated that there are properties that would work except that the price is prohibitive.

**Commissioner Hurdle** asked if there is absolutely no property that will fit his need.

**Rick** stated that that is correct.

**Chairman Heinrich** asked if there was anyone in attendance wishing to speak in favor of or in opposition to Zone Change #582.

**Discussion:**

**Commissioner Hurdle** asked if Commissioner Littler still has a property listed in the subdivision.

**Commissioner Littler** stated that he does have a property in the subdivision and he stated that there is no conflict of interest because the property owners had to approve the change in covenants. He stated that he had looked at the property and he feels that this is a good match.

**Commissioner Hurdle** stated that she does not feel that this is the correct approach to zoning. She stated that she feels that this is being personalized too much.

**Chairman Heinrich** stated that he has a problem with the change in covenants because they can be changed without notification of the board.

**Commissioner Littler** stated that he feels that this is a problem with the zoning code, because there are not enough classifications and this is a use that will fit the area nicely.

**Commissioner Hurdle** stated that as a member of the zoning commission she does not feel that **Commissioner Littler** should be voting because she feels he has a working interest in this zone change.

**Commissioner Littler** stated that he does not have a personal interest in this and he feels the problem is not with him but with the zoning code.

**Chairman Heinrich** read the by-laws and stated that it is up to Commissioner Littler to recuse himself if he feels that he should.

**Motion:**

*On a motion Commissioner Littler, seconded by Commissioner Cook, and passed by 3-2 voice vote with Commissioner Hurdle and Chairman Heinrich voting against, a recommendation of approval of Zone Change #582 will be forwarded to the BOCC at their meeting of September 27, 2005.*

**Return Item 2: Special Review #299**

**Mr. Friday** read the legal description and reviewed the staff report with an overhead PowerPoint presentation for the audience and reviewed the surrounding properties while explaining the existing zoning of the subject property. He said staff is forwarding a recommendation of denial. He explained the reasons for the staff decision.

**REQUEST**

This is a special review application to allow manufacturing of concrete products on site in a Controlled Industrial zone at 5815 Interstate Avenue. The property located on Lot 7, Block 3 of Titan Subdivision. Planning staff is recommending denial of this application. Action on this application is based on the approval of Zone Change #582 that is being heard by the Zoning

Commission at this same meeting. The property must be zoned Controlled Industrial for this Special Review to be considered.

#### **APPLICATION DATA**

OWNER: Jerry Jones, Billings Precast  
APPLICANT: Engineering, Inc.  
LEGAL DESCRIPTION: Lot 7, Block 3, Titan Subdivision  
ADDRESS: 5815 Interstate Avenue  
CURRENT ZONING: Highway Commercial (Zone Change #582 must be approved prior to action on this application)  
PROPOSED ZONING: Controlled Industrial  
EXISTING LAND USE: Crop production  
SIZE OF PARCEL: 9.4 acres

#### **CONCURRENT APPLICATIONS**

A Zone Change from Highway Commercial to Controlled Industrial on the subject property.

#### **SURROUNDING LAND USE & ZONING**

NORTH: Zoning: Agricultural Open Space and Highway Commercial  
Land Use: Agricultural uses, water park and restaurant

SOUTH: Zoning: Highway Commercial and Agricultural Open Space  
Land Use: Heavy equipment sales business and agricultural uses

EAST: Zoning: Highway Commercial  
Land Use: Construction and other commercial businesses

WEST: Zoning: Agricultural Open Space  
Land Use: Sod farm operation

#### **REASONS**

This is a special review to allow a pre-cast concrete plant and office on a lot zoned Controlled Industrial in the Titan Subdivision. The property is located at 5815 Interstate Avenue west of Mallowney Lane. The property is zoned Controlled Industrial and is bordered on the north and west by Agricultural Open Space zoning and bordered on the south and east by Highway Commercial zoning. The Titan Subdivision is a commercial subdivision zoned Highway Commercial. Existing businesses in the subdivision include a mobile crane business, a heavy equipment sales business and several contractor offices and storage facilities. A new subdivision has just received preliminary plat approval across Mallowney Lane from the Titan Subdivision about one-quarter mile from the subject property. The new Riverfront Pointe Subdivision is proposed in the Highway Commercial zoning district to have single-family and multi-family residential development. The applicant would like to relocate the Billings Precast concrete business to the property to operate a new manufacturing plant and office at the site. Billings Precast produces various cast concrete products, including septic tanks and pipe. The business currently resides at 29<sup>th</sup> Street West in a Controlled Industrial zoning district.

Planning staff has reviewed this application and is recommending denial. Before approving a special review use, the Zoning Commission shall find that the contemplated use complies with all requirements of this Resolution; is consistent with the objectives and purposes of the County Zoning Regulations and the Growth Policy; and is compatible with surrounding land uses or is otherwise screened and separated from adjacent land in such a way as to minimize adverse effects.

The proposed use does not fit in with the existing commercial and agricultural uses on the neighboring properties and in the area. The proposed use does not comply with the Yellowstone County and City of Billings Growth Policy in the following areas:

- Predictable land use decisions that are consistent with neighborhood character and land use patterns. Allowing a concrete manufacturing plant on this property would not be consistent with the neighborhood character and land use patterns in the area. This area of the County includes commercial and residential uses in close proximity to each other. While commercial uses near the subject property include sales and service of heavy construction equipment and offices and storage for construction contractors, a concrete plant introduces a use that may have impacts to the neighborhood in terms of noise, lights, dust and traffic that are more intense than the existing allowed uses in the area.
- New developments that are sensitive to and compatible with the character of existing neighborhoods. The applicant plans to develop this property for one of the most intense uses allowed in the Controlled Industrial zoning district. All of the property surrounding the subject property is zoned for less intense uses and does not allow concrete manufacturing even with a Special Review. Even if some buffering is done to reduce the impacts this business will have on the neighborhood, the use is compatible with the character of this area of the County.

The County Zoning Regulations are set up to reduce conflicts between uses of properties by the types of uses that are allowed in the different zoning districts. This area of the County is zoned for commercial, residential and agricultural uses. Having one property that is zoned for industrial uses is not compatible with the area. Having a property that is zoned for industrial uses and would be able to have a concrete manufacturing plant is even less compatible with the uses in this area of the County.

There were no objections received prior to the Zoning Commission meeting from County departments or from the surrounding property owners.

## **RECOMMENDATION**

Denial



**Discussion:**

**Chairman Heinrich** asked about adding conditions to the Special Review. He asked if the Covenants could be added to the conditions so that the planning department would be able to enforce the covenants.

**Vice-Chair Musselman** stated that he feels that this would give some control to the planning department so that the Covenants can not be changed without board approval.

**Ms. Cromwell** stated that the condition should be explicit that states that HC uses will be allowed on this property however any other use besides concrete pre-cast will have to have special review approval.

**Chairman Heinrich** asked if there was anyone in attendance wishing to speak in favor of or in opposition to Special Review #299.

*The public hearing was opened at 4:47 p.m.*

**Applicant:**

**Rick** stated that he is concerned that the condition 3 states that the roads and such must be paved. He stated that other properties in the area are gravel. He stated that they will work with dust mitigation however he doesn't believe that it is fair that he should have to pave the entire site. He stated that he is also concerned that all of the products must be behind a site-obscuring fence. He stated that there are other properties that do not have site-obscuring fences. He stated he would like consideration on those two conditions.

**Chairman Heinrich** asked if there was anyone else in attendance wishing to speak in favor of or in opposition to Special Review #299.

**Opponents:**

*The public hearing was closed at 4:51 p.m.*

**Discussion:**

**Rick** stated that he is concerned that the condition 3 states that the roads and such must be paved. He stated that other properties in the area are gravel. He stated that they will work with dust mitigation however he doesn't believe that it is fair that he should have to pave the entire site. He stated that he is also concerned that all of the products must be behind a site-obscuring fence. He stated that there are other properties that do not have site-obscuring fences. He stated he would like consideration on those two conditions.

**Chairman Heinrich** asked if dust mitigation is required on HC.

**Ms. Cromwell** stated that the sub regulations require paving in all new commercial areas except in instances where that would be unmanageable.

**Rick** stated that he doesn't want this construed that the entire area needs to be paved.

**Ms. Cromwell** stated that it is only required on the drive areas and the parking areas.

**Chairman Heinrich** asked if the need the site obscuring fence.

**Ms. Cromwell** stated that they only need the fence if the consider the Ag-Open zone as residential. If the Ag-Open is residential then they must have a site obscuring fence.

**Rick** stated that the question is whether this is an appropriate condition.

**Vice-Chair Musselman** asked how long the materials have to be cured.

**Dan** stated that they use about 4 acres for storage.

**Chairman Heinrich** asked how the fence could be eliminated.

**Ms. Cromwell** stated that the other properties around this area do not have to have screening.

**Rick** asked if the fence is being required because this is CI.

**Chairman Heinrich** stated that it is.

**Rick** stated that this is a operation that fits in with the other property and he thinks that this should be considered as such.

**Chairman Heinrich** asked Dan how much of his property is currently fenced.

**Dan** stated that they had very little fencing at there previous property.

**Vice-Chair Musselman** asked what type of landscaping they will be having in this area. He stated that he thinks that it would be an idea to have trees or hedges instead of a fence.

**Rick** clarified the landscaping. He stated that they would be put in trees in around the perimeter.

**Chairman Heinrich** stated that this area would have to be landscaped because of the zoning.

**Rick** stated that the covenants would require landscaping in this area.

**Chairman Heinrich** stated that he would like to have the trees instead of the site obscuring fence.

**Ms. Cromwell** suggested the following change to the conditions:

The property is bound by the following restriction any change from the concrete manufacturing to another use by right or by SR allowed in the Controlled industrial zone shall require an additional special review approval Uses allowed in HC zones shall be allowed without an additional SP uses allowed by SR on a HC zone shall require an additional special review the 2<sup>nd</sup> amendment to C&R's for the Titan Subdivision shall be filed prior to the application for a Zoning Compliance permit.

**Commissioner Cook** left at 5:12 pm.

#### **Motion:**

*On a motion Commissioner Littler, seconded by Commissioner Cook, and passed by 5-0 voice vote, a recommendation of approval of Special Review #299 will be forwarded to the BOCC at their meeting of September 30, 2005.*

#### **Item 3: Zone Change #583**

**Ms. Cromwell** read the legal description and reviewed the staff report with an overhead PowerPoint presentation for the audience and reviewed the surrounding properties while explaining the existing zoning of the subject property..

**PROBLEM/ISSUE STATEMENT:** On July 26, 2005, at the request of All American Nutrition, the Planning Board initiated an amendment to the Unified Zoning Regulations to allow limited manufacturing of pharmaceuticals in Highway Commercial zoning districts.

All American Nutrition prepares and markets nutritional supplements and is currently located at 1831 Main Street in a Highway Commercial zone. They intend to move and expand their business into the former K-Mart shopping center. It was discovered during their planning that Highway Commercial zones do not allow for the preparation of any medicinal, botanical or pharmaceutical supplies.

**BACKGROUND:** KMT DIL, LLC is the holding company for the former K-mart property in Billings Heights. The company is represented locally by attorney Michael Dockery. In the process of marketing the property to other retailers, All American Nutrition, a pharmaceutical manufacturer located at 1831 Main Street expressed an interest in acquiring the building to expand the business. It was discovered by agents for the holding company and All American Nutrition that any type or scale of pharmaceutical manufacturing or repackaging is not an allowed use in Highway Commercial or Community Commercial zoning districts. The owner and agents for the K-mart property determined that a re-zoning to Highway Commercial combined with a request to the Planning Board to initiate a regulation change to allow limited pharmaceutical manufacturing would make this re-use of the vacant 90,000 square foot building a viable option. On July 5, 2005, K-mart submitted a zone change application to change the zoning district from Community Commercial to Highway Commercial. On July 26, 2005 the Planning Board agreed to initiate an amendment to the Unified Zoning Regulations. The City Council approved the zone change request for the former K-mart shopping center from Community Commercial to Highway Commercial on August 22, 2005. A second reading is scheduled for September 12, 2005.

The Planning Board initiated amendment is proposing to add a definition of “Limited Pharmaceutical Manufacturing” to section 27-201 of the Unified Zoning Regulations. Staff is also recommending that section 27-306 (District Regulations: Commercial and Industrial Uses) be amended to add under Standard Industrial Classification Division D (28 - Chemical and Allied Products) be amended to allow limited manufacturing of Medicinal Chemicals and Botanical Products (SIC 2833) and Pharmaceutical Preparations (SIC 2834) in Highway Commercial and Controlled Industrial zoning districts. Section 27-306 is the matrix within the Unified Zoning Regulations that specifies allowed uses, special review uses and prohibited uses for each commercial or industrial zoning district.

### **RECOMMENDATION**

Planning Staff recommends the City and County Zoning Commissions recommend approval of the amendment to the Unified Zoning Regulation to allow limited pharmaceutical manufacturing in Highway Commercial and Controlled Industrial zoning districts. .

### **Discussion:**

**Chairman Heinrich** asked if there was anyone in attendance wishing to speak in favor of or in opposition to Zone Change #583.

*The public hearing was opened at 5:13p.m.*

**Applicant:**

**Chairman Heinrich** asked if there was anyone else in attendance wishing to speak in favor of or in opposition to Zone Change #583.

**Opponents:**

*The public hearing was closed at 5:13 p.m.*

**Discussion:**

**Motion:**

*On a motion Commissioner Cook, seconded by Commissioner Littler, and passed by 5-0 voice vote, a recommendation of approval of Zone Change #583 will be forwarded to the BOCC at their meeting of September 30, 2005.*

*The Public portion of the meeting ended at 5:13.*

**Other Business:**

Review of By-Laws.

**Adjournment:**

The meeting was adjourned at 5:15 p.m.

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**Oscar Heinrich, Chairman**

**ATTEST:**

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**Elizabeth Allen, Planning Clerk**